UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

٧.

PARKER H. PETIT and WILLIAM TAYLOR,

No. 19 Cr. 850 (JSR)

Defendants.

(Z [PROPOSED] PROTECTIVE ORDER

On February 6, 2020, the Court entered an order ("February 6 Order") relating to a claim of work product asserted by Non-Party MiMedx Group, Inc. ("MiMedx"). In the February 6 Order, the Court found that MiMedx had not waived work-product protection over three documents inadvertently produced to the staff of the Securities and Exchange Commission ("SEC") by MiMedx's former auditing firm, Ernst & Young ("EY"), and subsequently produced to Defendants in discovery in this case. Nonetheless, the Court found that Defendants had demonstrated a substantial need for portions of the inadvertently produced document containing fact work product but ordered those documents redacted to remove opinion work product, including MiMedx's counsel's mental impressions, opinions, conclusions, and legal advice.

MiMedx has since reviewed EY's production to the SEC staff and identified 283 additional documents containing MiMedx work product that EY inadvertently produced and did not make available to MiMedx for review prior to their production to the SEC staff. Of those 283 documents, 48 contain opinion work product. The remaining 235 documents contain MiMedx's fact work product, for which the Court has already found that Defendants have demonstrated a substantial need to discover. MiMedx now moves for a protective order under Federal Rule of Criminal Procedure 16(d) and Federal Rule of Evidence 502(d). The

Government and Defendants do not object to MiMedx's motion. Accordingly, the Court GRANTS MiMedx's motion and finds that there is good cause to ORDER as follows:

- 1. This Order is entered pursuant to Federal Rule of Evidence 502(d). The Court finds that EY's inadvertent production of MiMedx work product in this litigation did not waive MiMedx's protections under the work-product doctrine. Accordingly, the production and use of any inadvertently produced documents containing work product for which Defendants have demonstrated a substantial need will not constitute or be deemed a waiver or forfeiture—in this or any other action—of any claim of work-product protection that MiMedx would otherwise be entitled to assert.
- 2. The Court finds that the documents set forth in Exhibit A contain MiMedx's work product and that MiMedx has not waived its protections with respect to those documents under the work-product doctrine. The Court further finds that, as to the documents or portions of documents listed in Exhibit A containing only MiMedx's fact work product, Defendants have demonstrated a substantial need for that information for the reasons set forth in the Court's February 6 Order.
- 3. Within seven days, MiMedx shall serve on all parties redacted versions of all documents set forth in Exhibit B, after having redacted all passages containing or reflecting the mental impressions, conclusions, opinions, or legal theories of MiMedx and/or its attorneys and consultants retained by its attorneys or other representatives concerning litigation involving MiMedx. Pursuant to Rule 502(d), MiMedx's production of redacted versions of the documents in Exhibit B shall not constitute a waiver of any claim of work-product protection in this or any other action.

- 4. All documents contained in Exhibit A, including redacted versions of the documents contained in Exhibit B, shall be designated as Confidential Discovery Material. The Confidential Discovery Material shall not be used for any purpose unrelated to this litigation or the civil enforcement action, *S.E.C. v. MiMedx Group, Inc., et al.*, 19-cv-10927 (NRB) (S.D.N.Y.) ("SEC action"). No person subject to this Order other than MiMedx shall disclose the Confidential Discovery material to any other person whomsoever, except to:
 - a) the parties to this action and SEC action;
 - b) counsel retained specifically for this action or the SEC action, including any paralegal, clerical, or other assistant employed by such counsel and assigned to this matter;
 - as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
 - d) any witness whom counsel for a party in good faith believes may be called to testify at trial or deposition in this action or the SEC action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as Exhibit C hereto;
 - e) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action or the SEC action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
 - f) stenographers engaged to transcribe testimony taken in this action or the SEC action; or
 - g) the Court and its support personnel.

- 5. All Confidential Discovery Material or portions of pleadings, motions, or other papers filed with the Court that disclose Confidential Discovery Material, in whole or part, shall be filed under seal with the Clerk of the Court and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing. In any event, any party filing a motion or any other papers with the Court under seal shall also publicly file a redacted copy of the same, via the Court's Electronic Case Filing system, that redacts only the information contained in the Confidential Discovery Material, and not text that in no material way reveals the contents of Confidential Discovery Material.
- 6. Any party who objects to the confidential treatment of any Confidential Discovery Material, may at any time prior to the trial of this action or the SEC action serve upon counsel for MiMedx a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will convene a joint telephone call with the Court to obtain a ruling.
- 7. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any document or information contained in a document that is introduced in evidence at trial, even if such material has previously been sealed or designated as Confidential. The Court also retains unfettered discretion whether to afford confidential treatment to any document or information contained in any document submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.
- 8. Each person who has access to the Confidential Discovery Material shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

9. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action or the SEC action, whichever date is later, all Confidential Discovery Material shall be promptly returned to MiMedx or destroyed.

10. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

SO ORDERED

The Hon Jed S. Rakoff U.S. District Judge

DATED: New York, New York

October 23-2020

EXHIBIT A

Beginning Bates Number	Ending Bates Number
EY-MDXG-CUST-AB-000309	EY-MDXG-CUST-AB-000316
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EY-MDXG-CUST-AB-001197	EY-MDXG-CUST-AB-001198
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EY-MDXG-CUST-JH-009505	EY-MDXG-CUST-JH-009510
EY-MDXG-CUST-JH-009511	EY-MDXG-CUST-JH-009517
EY-MDXG-CUST-JH-009518	EY-MDXG-CUST-JH-009521
EY-MDXG-CUST-JH-009522	EY-MDXG-CUST-JH-009522
EY-MDXG-CUST-JH-009523	EY-MDXG-CUST-JH-009523
EY-MDXG-CUST-JH-009524	EY-MDXG-CUST-JH-009525
EY-MDXG-CUST-JH-009526	EY-MDXG-CUST-JH-009531
EY-MDXG-CUST-JH-009532	EY-MDXG-CUST-JH-009532
EY-MDXG-CUST-JH-009533	EY-MDXG-CUST-JH-009537
EY-MDXG-CUST-JH-009538	EY-MDXG-CUST-JH-009555
EY-MDXG-CUST-JH-009556	EY-MDXG-CUST-JH-009572

Beginning Bates Number	Ending Bates Number
EY-MDXG-CUST-JH-009573	EY-MDXG-CUST-JH-009574
EY-MDXG-CUST-JH-009575	EY-MDXG-CUST-JH-009591
EY-MDXG-CUST-JH-009592	EY-MDXG-CUST-JH-009599
EY-MDXG-CUST-JH-009600	EY-MDXG-CUST-JH-009609
EY-MDXG-CUST-JH-009610	EY-MDXG-CUST-JH-009616
EY-MDXG-CUST-JH-009617	EY-MDXG-CUST-JH-009617
EY-MDXG-CUST-JH-009618	EY-MDXG-CUST-JH-009625
EY-MDXG-CUST-JH-009626	EY-MDXG-CUST-JH-009631
EY-MDXG-CUST-JH-009632	EY-MDXG-CUST-JH-009633
EY-MDXG-CUST-JH-009634	EY-MDXG-CUST-JH-009634
EY-MDXG-CUST-JH-009635	EY-MDXG-CUST-JH-009635
EY-MDXG-CUST-JH-009636	EY-MDXG-CUST-JH-009640
EY-MDXG-CUST-JH-009641	EY-MDXG-CUST-JH-009645
EY-MDXG-CUST-JH-009646	EY-MDXG-CUST-JH-009650
EY-MDXG-CUST-JH-009651	EY-MDXG-CUST-JH-009651
EY-MDXG-CUST-JH-009667	EY-MDXG-CUST-JH-009670
EY-MDXG-CUST-JH-009677	EY-MDXG-CUST-JH-009677
EY-MDXG-CUST-JH-009686	EY-MDXG-CUST-JH-009686
EY-MDXG-CUST-JH-009687	EY-MDXG-CUST-JH-009695
EY-MDXG-CUST-JH-009696	EY-MDXG-CUST-JH-009698
EY-MDXG-CUST-JH-009699	EY-MDXG-CUST-JH-009708
EY-MDXG-CUST-JH-009709	EY-MDXG-CUST-JH-009716
EY-MDXG-CUST-JH-009717	EY-MDXG-CUST-JH-009728
EY-MDXG-CUST-JH-009730	EY-MDXG-CUST-JH-009731
EY-MDXG-CUST-JH-009732	EY-MDXG-CUST-JH-009734
EY-MDXG-CUST-JH-009735	EY-MDXG-CUST-JH-009739
EY-MDXG-CUST-JH-009740	EY-MDXG-CUST-JH-009742
EY-MDXG-CUST-JH-009743	EY-MDXG-CUST-JH-009745
EY-MDXG-CUST-JH-009787	EY-MDXG-CUST-JH-009789
EY-MDXG-CUST-JH-009790	EY-MDXG-CUST-JH-009792
EY-MDXG-CUST-JH-009813	EY-MDXG-CUST-JH-009813
EY-MDXG-CUST-JH-009821	EY-MDXG-CUST-JH-009839
EY-MDXG-CUST-JH-009840	EY-MDXG-CUST-JH-009859
EY-MDXG-CUST-JH-009862	EY-MDXG-CUST-JH-009862
EY-MDXG-CUST-JH-009864	EY-MDXG-CUST-JH-009864
EY-MDXG-CUST-JH-009868	EY-MDXG-CUST-JH-009868
EY-MDXG-CUST-JH-009869	EY-MDXG-CUST-JH-009876
EY-MDXG-CUST-JH-009877	EY-MDXG-CUST-JH-009880
EY-MDXG-CUST-JH-009881	EY-MDXG-CUST-JH-009883
EY-MDXG-CUST-JH-009884	EY-MDXG-CUST-JH-009886
EY-MDXG-CUST-JH-009887	EY-MDXG-CUST-JH-009888
EY-MDXG-CUST-JH-009889	EY-MDXG-CUST-JH-009889

Beginning Bates Number	Ending Bates Number
EY-MDXG-CUST-JH-009892	EY-MDXG-CUST-JH-009892
EY-MDXG-CUST-JH-009894	EY-MDXG-CUST-JH-009907
EY-MDXG-CUST-JH-009908	EY-MDXG-CUST-JH-009920
EY-MDXG-CUST-JH-009921	EY-MDXG-CUST-JH-009922
EY-MDXG-CUST-JH-009925	EY-MDXG-CUST-JH-009925
EY-MDXG-CUST-JH-009926	EY-MDXG-CUST-JH-009926
EY-MDXG-CUST-JH-009927	EY-MDXG-CUST-JH-009927
EY-MDXG-CUST-JH-009931	EY-MDXG-CUST-JH-009932
EY-MDXG-CUST-JH-009934	EY-MDXG-CUST-JH-009939
EY-MDXG-CUST-JH-009940	EY-MDXG-CUST-JH-009941
EY-MDXG-CUST-JH-009942	EY-MDXG-CUST-JH-009943
EY-MDXG-CUST-JH-009946	EY-MDXG-CUST-JH-009946
EY-MDXG-CUST-JH-009947	EY-MDXG-CUST-JH-009947
EY-MDXG-CUST-JH-009949	EY-MDXG-CUST-JH-009949
EY-MDXG-CUST-JH-009950	EY-MDXG-CUST-JH-009950
EY-MDXG-CUST-JH-009953	EY-MDXG-CUST-JH-009954
EY-MDXG-CUST-JH-009957	EY-MDXG-CUST-JH-009959
EY-MDXG-CUST-JH-009960	EY-MDXG-CUST-JH-009961
EY-MDXG-CUST-JH-009962	EY-MDXG-CUST-JH-009962
EY-MDXG-CUST-JH-009963	EY-MDXG-CUST-JH-009965
EY-MDXG-CUST-JH-009966	EY-MDXG-CUST-JH-009968
EY-MDXG-CUST-JH-009973	EY-MDXG-CUST-JH-009975
EY-MDXG-CUST-JH-010017	EY-MDXG-CUST-JH-010017
EY-MDXG-CUST-JH-010035	EY-MDXG-CUST-JH-010045
EY-MDXG-CUST-JH-010048	EY-MDXG-CUST-JH-010048
EY-MDXG-CUST-JH-010049	EY-MDXG-CUST-JH-010130
EY-MDXG-CUST-JH-010131	EY-MDXG-CUST-JH-010218
EY-MDXG-CUST-JH-010219	EY-MDXG-CUST-JH-010221
EY-MDXG-CUST-JH-010222	EY-MDXG-CUST-JH-010224
EY-MDXG-CUST-JH-000007	EY-MDXG-CUST-JH-000010
EY-MDXG-CUST-JH-000005	EY-MDXG-CUST-JH-000006
EY-MDXG-CUST-JH-000004	EY-MDXG-CUST-JH-000004
EY-MDXG-CUST-AB-002641	EY-MDXG-CUST-AB-002770

EXHIBIT B

Beginning Bates Number	Ending Bates Number
EY-MDXG-CUST-AB-000839	EY-MDXG-CUST-AB-000841
EY-MDXG-CUST-AB-000952	EY-MDXG-CUST-AB-000971
EY-MDXG-CUST-AB-001022	EY-MDXG-CUST-AB-001042
EY-MDXG-CUST-AB-001085	EY-MDXG-CUST-AB-001091
EY-MDXG-CUST-AB-001401	EY-MDXG-CUST-AB-001402
EY-MDXG-CUST-AB-001450	EY-MDXG-CUST-AB-001450
EY-MDXG-CUST-JH-000517	EY-MDXG-CUST-JH-000597
EY-MDXG-CUST-JH-000676	EY-MDXG-CUST-JH-000775
EY-MDXG-CUST-JH-001852	EY-MDXG-CUST-JH-001853
EY-MDXG-CUST-JH-005375	EY-MDXG-CUST-JH-005375
EY-MDXG-CUST-JH-005377	EY-MDXG-CUST-JH-005377
EY-MDXG-CUST-JH-005485	EY-MDXG-CUST-JH-005485
EY-MDXG-CUST-JH-005487	EY-MDXG-CUST-JH-005488
EY-MDXG-CUST-JH-005493	EY-MDXG-CUST-JH-005493
EY-MDXG-CUST-JH-005494	EY-MDXG-CUST-JH-005494
EY-MDXG-CUST-JH-005495	EY-MDXG-CUST-JH-005495
EY-MDXG-CUST-JH-005496	EY-MDXG-CUST-JH-005496
EY-MDXG-CUST-JH-005500	EY-MDXG-CUST-JH-005500
EY-MDXG-CUST-JH-005501	EY-MDXG-CUST-JH-005501
EY-MDXG-CUST-JH-005514	EY-MDXG-CUST-JH-005519
EY-MDXG-CUST-JH-005670	EY-MDXG-CUST-JH-005677
EY-MDXG-CUST-JH-009280	EY-MDXG-CUST-JH-009280
EY-MDXG-CUST-JH-009290	EY-MDXG-CUST-JH-009309
EY-MDXG-CUST-JH-009313	EY-MDXG-CUST-JH-009332
EY-MDXG-CUST-JH-009340	EY-MDXG-CUST-JH-009347
EY-MDXG-CUST-JH-009364	EY-MDXG-CUST-JH-009371
EY-MDXG-CUST-JH-009381	EY-MDXG-CUST-JH-009386
EY-MDXG-CUST-JH-009393	EY-MDXG-CUST-JH-009396
EY-MDXG-CUST-JH-009431	EY-MDXG-CUST-JH-009431
EY-MDXG-CUST-JH-009477	EY-MDXG-CUST-JH-009482
EY-MDXG-CUST-JH-009493	EY-MDXG-CUST-JH-009496
EY-MDXG-CUST-JH-009505	EY-MDXG-CUST-JH-009510
EY-MDXG-CUST-JH-009511	EY-MDXG-CUST-JH-009517
EY-MDXG-CUST-JH-009556	EY-MDXG-CUST-JH-009572
EY-MDXG-CUST-JH-009575	EY-MDXG-CUST-JH-009591
EY-MDXG-CUST-JH-009600	EY-MDXG-CUST-JH-009609
EY-MDXG-CUST-JH-009610	EY-MDXG-CUST-JH-009616
EY-MDXG-CUST-JH-009618	EY-MDXG-CUST-JH-009625
EY-MDXG-CUST-JH-009626	EY-MDXG-CUST-JH-009631
EY-MDXG-CUST-JH-009634	EY-MDXG-CUST-JH-009634

Beginning Bates Number	Ending Bates Number
EY-MDXG-CUST-JH-009717	EY-MDXG-CUST-JH-009728
EY-MDXG-CUST-JH-009821	EY-MDXG-CUST-JH-009839
EY-MDXG-CUST-JH-009840	EY-MDXG-CUST-JH-009859
EY-MDXG-CUST-JH-009931	EY-MDXG-CUST-JH-009932
EY-MDXG-CUST-JH-009942	EY-MDXG-CUST-JH-009943
EY-MDXG-CUST-JH-009973	EY-MDXG-CUST-JH-009975
EY-MDXG-CUST-AB-002641	EY-MDXG-CUST-AB-002770

EXHIBIT C

SOUTHERN DISTRICT OF NEW YORK	
UNITED STATES OF AMERICA,	
v.	No. 19 Cr. 850 (JSR)
PARKER H. PETIT and WILLIAM TAYLOR,	
Defendants.	

NON-DISCLOSURE AGREEMENT

I,, acknowledge that I have read and
understand the Protective Order dated in this action governing the
non-disclosure of the Confidential Discovery Material. I agree that I will not
disclose such Confidential Discovery Material to anyone other than for purposes of
this litigation and that at the conclusion of the litigation I will return all discovery
information to the party or attorney from whom I received it. By acknowledging
these obligations under the Protective Order, I understand that I am submitting
myself to the jurisdiction of the United States District Court for the Southern
District of New York for the purpose of any issue or dispute arising hereunder and
that my willful violation of any term of the Protective Order could subject me to
punishment for contempt of Court.
Dated: